servants engaging in a collateral business has led one state, at least, to declare it illegal *per se*,[17] and the remedy of prohibition found expression in the Commodities Clause of the Hepburn Rate Law.[18] The provision for joint ownership is simply a different method of insuring against discrimination.

SUITS CONTESTING OWNERSHIP OF CORPORATE STOCK. — A share of stock in a corporation, apart from any question of the certificate, is a property right of a peculiar nature. While generally considered as personal property,[1] clearly it is not a chose in possession. On the other hand, as it secures a right to participate in profits, a voice in the management of the corporation, and a right to a share of the assets on dissolution,[2] it is considerably greater than the ordinary transitory right.[3] Hence it has sometimes been designated as "in the nature of a chose in action," [4] and the statement has even been made that "it is neither a chattel nor a chose in action." [5] The Supreme Court of Washington has recently gone to the root of the whole question, holding that in an action by a local administrator to have his name entered on the books of a domestic corporation as the owner of certain stock, substituted service on a foreign administrator having possession of the certificates gives the court jurisdiction. *Gamble* v. *Dawson*, 120 Pac. 1060.

This conclusion necessarily involves the conception of stock as a *res* having a *situs* at the domicile of the corporation. The doctrine is generally recognized that for the purpose of suits contesting its ownership the *situs* of stock is within the state creating the corporation,[6] and the same view prevails with regard to attachment.[7] For taxation purposes stock appears to have a somewhat volatile *situs*. It is taxable at the domicile of the corporation, although belonging to a non-resident, as representing the owner's interest in the property,[8] or because the state creating the corporation can fix the taxation *situs* of its stock at will.[9] And it is taxable by the state of the holder as existing there in the form of personal estate.[10] This amounts to the conclusion that the owner's in-

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[17] Central Elevator Co. *v.* People *ex rel.* Moloney, 174 Ill. 203, 51 N. E. 254; Hannah *v.* People *ex rel.* Attorney General, 198 Ill. 77, 64 N. E. 776.

[18] 34 U. S. STAT. AT LARGE, c. 3591, p. 585, FED. STAT., SUPP., 1909, 257.

[1] Russell *v.* Temple, Sup. Ct., Mass., 1798, 3 DANE'S ABR. 108. But see Price *v.* Price's Heirs, 6 Dana (Ky.) 107.

[2] Burrall *v.* Bushwick R. Co., 75 N. Y. 211.

[3] See Sargent *v.* Essex Marine Ry. Co., 26 Mass. 202.

[4] See Arnold *v.* Ruggles, 1 R. I. 165, 174.

[5] See LOWELL, TRANSFER OF STOCK, § 9. Shares are not things in action within the meaning of the English Bankruptcy Act. *Ex parte* Union Bank of Manchester, L. R. 12 Eq. 354. But see Colonial Bank *v.* Whitney, 11 App. Cas. 426.

[6] Jellenik *v.* Huron Copper Mining Co., 177 U. S. 1, 20 Sup. Ct. 559; Sohege *v.* Singer Mfg. Co., 73 N. J. Eq. 567, 68 Atl. 64.

[7] Barber *v.* Morgan, 84 Conn. 618, 80 Atl. 791. See also Masury *v.* Arkansas National Bank, 87 Fed. 381. As to attachment of certificates, see 25 HARV. L. REV. 74, 470.

[8] Matter of Bronson, 150 N. Y. 1, 44 N. E. 707.

[9] Corry *v.* Mayor, etc. of Baltimore, 196 U. S. 466, 25 Sup. Ct. 297. But see Oliver *v.* Washington Mills, 93 Mass. 268.

[10] Dwight *v.* Mayor, etc. of Boston, 94 Mass. 316; Worthington *v.* Sebastian, Treasurer, 25 Oh. St. 1.

terest in the corporation has a double location, and hence such a criterion is of little aid in fixing the true *situs*.

Since the stock, as such, has been created by the incorporating state, and the power of control as regards third persons is lodged there, on a practical as well as theoretical basis the stock must exist in that state.[11] A non-resident shareholder may have certain claims on the corporation, but it is only at its domicile that these can be properly enforced, and through its courts that his rights can be efficaciously administered. Some courts have gone so far as to say that the stock represents an indivisible interest in the corporate enterprise[12] — property held by the company for the benefit of the shareholder — but it is submitted that this view, if taken literally, involves an unnecessary disregard of the corporate fiction. Language sounding *in rem*, however, has properly been used in considering the nature of an action questioning the ownership of corporate stock when the adverse claimant is served by publication.[13] The elements of an ordinary action *in rem* are present, and the analogy strengthens the conclusion in the principal case, while the authorities reach a similar result on questions of garnishment.[14] The proper view would seem to be that the consensual relation of the parties has given rise to an elaborate chose in action of such a stable and permanent nature that in suits regarding its ownership it may be considered as property in the nature of a *res* existing at the domicile of the corporation.[15]

LIABILITY OF CHARITABLE CORPORATIONS FOR TORTS. — There are four views as to the extent of immunity of charitable corporations from tort liability. First, general immunity is granted. This was held in the first English case on the whole subject, on the ground that it is a breach of the trust to apply the trust funds to damages.[1] This reasoning was later discredited in England[2] and has received but slight support in the United States.[3] The same conclusion has been reached, however, on

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[11] But see *In re* Clark, [1904] 1 Ch. 294. In this case an English testator bequeathed all his personal estate in the United Kingdom to A., and all his personal estate in South Africa to B. The court held that shares in a South African company, the certificates of which were in London, passed to A.

[12] See Jellenik *v.* Huron Copper Mining Co., 177 U. S. 1, 13, 20 Sup. Ct. 559, 563; Matter of Bronson, 150 N. Y. 1, 8, 44 N. E. 707, 708.

[13] Andrews *v.* Guayaquil & Quito Ry. Co., 69 N. J. Eq. 211, 60 Atl. 568; Patterson *v.* Farmington Street Ry. Co., 76 Conn. 628, 57 Atl. 853.

[14] Harris *v.* Balk, 198 U. S. 215, 25 Sup. Ct. 625.

[15] For an interesting discussion of the relation of corporation and shareholder as a status, see 34 AM. L. REG. 448; 25 HARV. L. REV. 278.

[1] Heriot's Hospital *v.* Ross, 12 Cl. & F. 507. This was not a case of *respondeat superior*.

[2] Mersey Docks, etc. Trustees *v.* Gibbs, L. R. 1 H. L. 93.

[3] Perry *v.* House of Refuge, 63 Md. 20; Parks *v.* Northwestern University, 218 Ill. 381, 75 N. E. 991; Fire Ins. Patrol *v.* Boyd, 120 Pa. St. 624; Downs *v.* Harper Hospital, 101 Mich. 555, 60 N. W. 42. The immunity in these cases was as to torts by agents. Powers *v.* Massachusetts Homeopathic Hospital, 109 Fed. 294, exposes the weakness of the trust-fund doctrine, namely, that the liability of a private trust fund for torts is well recognized.